

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

E.S.S. CO.

Employer

and

Case 4-RC-21358

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 827, AFL-CIO

Petitioner

REPORT AND RECOMMENDATION ON OBJECTIONS TO THE ELECTION

Pursuant to a Stipulated Election Agreement approved by the undersigned Regional Director on November 2, 2007, an election by secret ballot was conducted on November 29, 2007, in the unit set forth in the Agreement. The Tally of Ballots, copies of which were made available to the parties at the conclusion of the election, showed the following results:

Approximate number of eligible voters	191
Void Ballots	1
Votes cast for Petitioner	33
Votes cast against participating labor organization(s)	61
Valid votes counted	94
Challenged Ballots	9
Valid votes counted plus challenged ballots	103

The challenges are not sufficient in number to affect the results of the election.

On December 3, and December 4, 2007, the Petitioner timely filed Objections and amended Objections to conduct affecting the results of the election. The Objections essentially allege that the Employer laid off 20 bargaining unit employees in retaliation for employees' Union activities and that by laying off these employees, the Employer coerced and intimidated the remaining employees in the unit.

Pursuant to Section 102.69(c) of the Board's Rules and Regulations, an investigation of the Objections was conducted under my direction and supervision. During the investigation, each party was afforded the opportunity to present witnesses and evidence relevant to the issues raised by the Objections. The investigation disclosed, and the undersigned reports, as follows:

In Case 4-CA-35792, the Petitioner alleged that the Employer violated Section 8(a)(1) and (3) of the Act by the same conduct which is the subject of the Objections. Based on the results of the investigation, it was determined that the allegations of the charge lacked merit and the parties were notified of this determination by letter dated January 31, 2008. No appeal was filed to this determination. Accordingly, I find that the Objections also lack merit.

RECOMMENDATION

Based on the foregoing, I recommend that the Petitioner's Objections be overruled.¹

Signed at Philadelphia, Pennsylvania this 21st day of February, 2008.

DOROTHY L. MOORE-DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

¹ Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington, D.C. by March 6, 2008. Under the provisions of Sec. 102.69(g)(3) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.